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No. 94-1175

Supreme Court, U. S.

F I L E D

AUG 31 1995

In The
Supreme Court of the United States CLERK

OCTOBER TERM, 1995

BANK ONE, CHICAGO, N.A.,

Petitioner,

v.

MIDWEST BANK & TRUST COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOINT APPENDIX

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Opinion of the United States Court
of Appeals for the Seventh Circuit,
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The following opinions, judgments, and orders have been
omitted from this Joint Appendix because they appear on the
following pages in the printed appendix to the Petition for a
Writ of Certiorari:

Opinion of the United States District
Court for the Northern District of
Illinois, dated November 25, 1992 17a

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Order of the United States Court of
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and denying petition for rehearing,
entered September 20, 1994 24a

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 93-3251

First Illinois Bank & Trust v. Midwest Bank & Trust Co.

RELEVANT DOCKET ENTRIES

Date	Description
9/21/93	Private civil case docketed.
9/21/93	Filed Appellant Midwest Bank & Trust jurisdictional statement.
10/19/93	Original record on appeal filed. Contents of record: 1 vol. pleadings; 1 vol. transcripts; 1 exhibits; 2 vol. loose pleadings.
11/3/93	Supplemental record on appeal filed. Contents of record: 1 vol. pleadings.
12/1/93	Filed 15c appellant's brief by Midwest Bank & Trust.
12/1/93	Filed 10c appendix by Appellant Midwest Bank & Trust.
1/28/94	Filed 15c appellee's brief by First Illinois Bank & Trust.
2/14/94	Filed 15c appellant's reply brief by Midwest Bank & Trust.

- 3/1/94 ORDER: Argument set for Wednesday, April 13, 1994 at 2:00 p.m. in the auxiliary courtroom. Each side limited to 15 minutes.
- 4/13/94 Case heard and taken under advisement by panel: Circuit Judge Walter J. Cummings, Circuit Judge Frank H. Easterbrook, Circuit Judge Daniel A. Manion.
- 4/14/94 ORAL ORDER from the bench requesting that the parties file statements regarding jurisdiction by 4/20/94.
- 4/20/94 Filed Appellant Midwest Bank & Trust jurisdictional memorandum.
- 4/20/94 Filed Appellee First Illinois Bank & Trust jurisdictional memorandum.
- 5/3/94 Supplemental record on appeal filed. Contents of record: 2 vol. transcripts.
- 7/11/94 Filed opinion of the court by Judge Cummings. VACATED & REMANDED with instructions. Cummings, Easterbrook, Manion.
- 7/11/94 ORDER: Final judgment filed per opinion. With costs: Each party to bear their own costs.
- 7/19/94 Filed motion by Appellee First Illinois Bank & Trust to extend time to file Petition for Rehearing.
- 7/26/94 ORDER issued GRANTING motion to extend time to file Petition for Rehearing. Petition for Rehearing due 8/25/94 for First Illinois Bank & Trust.

- 8/25/94 Filed 25c Petition for Rehearing with Suggestion for Rehearing Enbanc by Appellees First Illinois Bank & Trust.
- 8/25/94 Filed motion by Standard Bank & Trust Company to file amicus brief.
- 8/25/94 Filed motion for New York Clearing House Association for leave to file amicus brief.
- 8/29/94 Filed motion by Board of Governors of the Federal Reserve System to file amicus brief in support of appellee's Petition for Rehearing. 25c amicus brief tendered.
- 8/29/94 ORDER issued GRANTING motion to file amicus brief. Standard Bank added to case as amicus.
- 8/29/94 ORDER issued GRANTING motion to file amicus brief. New York Clearing House added to case as amicus.
- 8/29/94 ORDER issued GRANTING motion to file amicus brief. Board of Governors of the Federal Reserve System added to case as amicus.
- 9/20/94 ORDER: The opinion of this Court issued on 7/11/94 is corrected as follows: The last paragraph on page 2 is substituted. See order for details.
- 9/20/94 ORDER: Appellee First Illinois Bank & Trust Petition for Rehearing with Suggestion for Rehearing Enbanc is DENIED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 1:92cv6324

First Illinois Bank & Trust v. Midwest Bank & Trust Co.

RELEVANT DOCKET ENTRIES

Date	No.	Description
9/18/92	1	COMPLAINT; jury demand.
11/5/92	8	MOTION by defendant Midwest Bank & Trust Co. to dismiss plaintiff's action for failure to state a claim.
11/5/92	9	MEMORANDUM by defendant Midwest Bank & Trust Co. in support of defendant's motion to dismiss pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure. [Motion and Memorandum filed in separate volume.]
11/25/92	12	MEMORANDUM OPINION.
11/25/92	13	MINUTE ORDER of 11/25/92 by Hon. Charles P. Kocoras : Enter memorandum opinion that defendant's motion to dismiss plaintiff's action for failure to state a claim is denied.

12/15/92	14	ANSWER by defendant Midwest Bank & Trust Co.
4/22/93	27	AMENDED COMPLAINT.
5/3/93	28	ANSWER TO AMENDED COMPLAINT of First Illinois Bank & Trust by defendant Midwest Bank & Trust Co.
7/8/93	35	STIPULATIONS as to uncontested facts.
7/22/93	37	MOTION by plaintiff First Illinois Bank & Trust for summary judgment.
7/22/93	38	MEMORANDUM by plaintiff First Illinois Bank & Trust in support of motion for summary judgment.
7/22/93	39	CROSS-MOTION by defendant Midwest Bank & Trust Co. for summary judgment.
7/22/93	40	MEMORANDUM by defendant Midwest Bank & Trust Co. in support of cross-motion for summary judgment.
8/5/93	42	REPLY by defendant Midwest Bank & Trust Co. to plaintiff's motion for summary judgment.
8/6/93	43	MEMORANDUM by plaintiff First Illinois Bank & Trust in response to defendant's cross motion for summary judgment.
8/31/93	46	MEMORANDUM ORDER.

- 8/31/93 47 **MINUTE ORDER of 8/31/93 by Hon. Charles P. Kocoras : Ruling held. Enter memorandum opinion: Defendant's motion for summary judgment is denied. Plaintiff's motion for summary judgment is granted in the amount of \$43,912.06. Final judgment entered. All other pending motions, if any, are hereby moot.**
- 8/31/93 48 **ENTERED JUDGMENT.**
- 9/15/93 49 **NOTICE OF APPEAL by defendant Midwest Bank & Trust Co. from order, minute order and judgment entered (PAID \$105.00).**

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 93-3251

**FIRST ILLINOIS BANK & TRUST,
an Illinois Banking Corporation,**

Plaintiff-Appellee,

v.

**MIDWEST BANK & TRUST COMPANY,
an Illinois Banking Corporation,**

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 92 C 6324—Charles P. Kocoras, Judge

Argued April 13, 1994—Decided July 11, 1994

As Amended on Denial
of Rehearing, September 20, 1994

Before CUMMINGS, EASTERBROOK and MANION,
Circuit Judges.

CUMMINGS, *Circuit Judge.* In April 1992 plaintiff First Illinois Bank & Trust ("First Illinois") filed an amended complaint against Midwest Bank & Trust Company

("Midwest") complaining that Midwest returned a \$64,294.27 check unpaid and negligently failed to advise First Illinois that the check was NSF (Not Sufficient Funds). First Illinois claimed Midwest violated its duty under Regulation CC (12 CFR part 229) to give a reason for returning a check unpaid. 12 CFR §§ 229.30(d), 229.33(b)(8). Pursuant to 12 CFR § 229.38(a), First Illinois sought to recover damages resulting from Midwest's alleged negligence. Subsequently Judge Kocoras granted First Illinois' motion for summary judgment, simultaneously denied summary judgment to Midwest, and entered judgment for First Illinois for \$43,912.06, the claimed amount of its loss. The district court found that Midwest had breached the standard of care imposed by Regulation CC by returning the check without advising First Illinois that the check was NSF. Midwest thereafter appealed from the judgment below.

At the April 13, 1994, oral argument in this Court, we questioned whether the district court had jurisdiction over this controversy and ordered both parties to file memoranda concerning that question. We now hold that the district court had no such jurisdiction.

Jurisdiction is supposedly granted under the Expedited Funds Availability Act (12 U.S.C. §§ 4001-4010), in particular by 12 U.S.C. § 4010, titled "Civil liability." Subsection (d) ("Jurisdiction") provides that "any action under this section may be brought in any United States district court...." 12 U.S.C. § 4010(d). But subsection (a) ("Civil liability") limits the application of the section to certain disputes between "any depository institution" and "any person other than another depository institution." 12 U.S.C. § 4010(a). Because the parties concede that both First Illinois and Midwest Bank are "depository institutions" within the meaning of the Expedited Funds Availability Act, 12 U.S.C. § 4001(12), we have no jurisdiction over this dispute.

Disputes such as this, between members of the Federal Reserve System, are to be handled administratively before the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. § 4009(c)(1) (or perhaps in state court). This conclusion is bolstered by the provisions of 12 U.S.C. § 4010(f), which authorize the Federal Reserve Board to establish liability among "depository institutions" such as these parties. Although the Board of Governors has informed us that no mechanism is currently available for administrative resolution of such disputes, the Board's differing interpretation of this statute cannot confer jurisdiction upon the Court.

The purpose of the Expedited Funds Availability Act is to require banks to make funds available to depositors quickly. Thus the depositors have rights, enforceable in court, while the banks have obligations, which the Federal Reserve Board may establish by regulation and enforce in administrative proceedings.

The judgment below is vacated and the action is remanded to the district court with instructions to dismiss it for want of jurisdiction.